

48A C.J.S. Judges § 321

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

D. Objections to Judge and Proceedings Thereon

2. Mode and Sufficiency of Raising Objection

b. Affidavit of Bias or Prejudice

§ 321. Particularity of affidavit of bias or prejudice

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

In an affidavit of bias or prejudice, the facts relied on to support the disqualifications should generally be stated with particularity, and general allegations, or mere conclusory allegations, are insufficient.

In some jurisdictions, an affidavit alleging bias or prejudice is sufficient if made in the language of the statute,¹ and the facts showing actual bias or prejudice need not be alleged.² Under many statutes, however, it is necessary for the application or affidavit to set forth specific and substantial facts and reasons, in detail, showing bias or prejudice.³ In other words, an affidavit of bias or prejudice must specifically state the objective or definitive facts supporting the challenge to the qualification of the judge.⁴ Unsubstantiated assertions,⁵ mere general allegations,⁶ or conclusory allegations⁷ are insufficient even if phrased in the language of the statute.⁸

It is not necessary that the affidavit fulfill the technical requirements of an indictment,⁹ but a common-law pleader's approach to such applications is not to be taken.¹⁰ However, the facts should be stated with the particularity expected of a bill of particulars,¹¹ and the affidavit must identify with particularity the time, place, persons, and circumstances supporting the affiant's belief of personal bias against the affiant or in favor of the affiant's opponent.¹² The minimum requirement is sufficient detail in the affidavit that the affiant would expose himself or herself to charges of perjury if the affiant were guilty of swearing to statements that the affiant knew to be false.¹³

CUMULATIVE SUPPLEMENT

Cases:

Request for substitution of judge had to be filed in writing with circuit court, and thus neither defendant's oral request in circuit court nor his written request to court of appeals complied with statutory requirements for motion for substitution of judge. *Wis. Stat. Ann. § 971.20(7)*. *State v. Zimbal*, 2017 WI 59, 2017 WL 2569872 (Wis. 2017).

[END OF SUPPLEMENT]

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1

Ill.—*Corbetta Const. Co. of Illinois, Inc. v. Lake County Public Bldg. Commission*, 64 Ill. App. 3d 313, 21 Ill. Dec. 431, 381 N.E.2d 758 (2d Dist. 1978).

Nev.—*State ex rel. Kline v. Eighth Judicial Dist. Court*, 70 Nev. 172, 264 P.2d 396 (1953).

Wash.—*State v. Franulovich*, 89 Wash. 2d 521, 573 P.2d 1298 (1978).
- 2

Cal.—*Fairfield v. Superior Court for Los Angeles County*, 216 Cal. App. 2d 438, 31 Cal. Rptr. 3 (2d Dist. 1963).

Idaho—*State v. Bitz*, 93 Idaho 239, 460 P.2d 374 (1969).

Ind.—*Briscoe v. State*, 180 Ind. App. 450, 388 N.E.2d 638 (1979).
- 3

U.S.—*U.S. v. Gigax*, 605 F.2d 507 (10th Cir. 1979) (disapproved of on other grounds by, *U.S. v. Lang*, 364 F.3d 1210 (10th Cir. 2004)).

Ariz.—*State v. Harwood*, 110 Ariz. 375, 519 P.2d 177 (1974).

Colo.—*Carr v. Barnes*, 196 Colo. 70, 580 P.2d 803 (1978).

N.M.—*Stein v. Speer*, 1973-NMSC-070, 85 N.M. 418, 512 P.2d 1254 (1973).

Or.—*State ex rel. Bushman v. Vandenberg*, 203 Or. 326, 280 P.2d 344 (1955).

Clear averments essential

Cal.—*Shakin v. Board of Medical Examiners*, 254 Cal. App. 2d 102, 62 Cal. Rptr. 274, 23 A.L.R.3d 1398 (2d Dist. 1967).

Showing of dislike by party insufficient

U.S.—*U.S. v. Goeltz*, 513 F.2d 193, 30 A.L.R. Fed. 488 (10th Cir. 1975).
- 4

U.S.—*Tezak v. U.S.*, 256 F.3d 702 (7th Cir. 2001).

Ind.—*Hite v. Haase*, 729 N.E.2d 170 (Ind. Ct. App. 2000).

La.—*Couvillion v. Couvillion*, 769 So. 2d 747 (La. Ct. App. 5th Cir. 2000), writ denied, 781 So. 2d 562 (La. 2001).
- 5

U.S.—*In re Spirtos*, 298 B.R. 425 (Bankr. C.D. Cal. 2003).

- 6 Ill.—*People ex rel. Kuncie v. Hogan*, 67 Ill. 2d 55, 7 Ill. Dec. 63, 364 N.E.2d 50 (1977).
- Nev.—*Ham v. Eighth Judicial Dist. Court, In and For Clark County*, 93 Nev. 409, 566 P.2d 420 (1977).
- R.I.—*State v. Oliveira*, 774 A.2d 893 (R.I. 2001).
- Fear alone insufficient**
- U.S.—*Bradley v. School Bd. of City of Richmond, Va.*, 324 F. Supp. 439 (E.D. Va. 1971).
- Judge's alleged awareness of "inflammatory information"**
- U.S.—*U.S. v. Roca-Alvarez*, 451 F.2d 843 (5th Cir. 1971).
- Dislike of judge insufficient**
- U.S.—*U.S. v. Bray*, 546 F.2d 851 (10th Cir. 1976).
- 7 U.S.—*Lease v. Fishel*, 712 F. Supp. 2d 359 (M.D. Pa. 2010), *aff'd*, 2010 WL 4318833 (M.D. Pa. 2010).
- Colo.—*Kane v. County Court Jefferson County*, 192 P.3d 443 (Colo. App. 2008).
- Conclusion under oath insufficient**
- Ill.—*People v. Coleman*, 32 Ill. App. 3d 949, 337 N.E.2d 269 (1st Dist. 1975).
- 8 Ky.—*Nelson v. Com.*, 202 Ky. 1, 258 S.W. 674 (1924).
- 9 U.S.—*Nations v. U.S.*, 14 F.2d 507 (C.C.A. 8th Cir. 1926); *U. S. v. Hanrahan*, 248 F. Supp. 471 (D. D.C. 1965).
- 10 U.S.—*Smith v. Danyo*, 585 F.2d 83, 26 Fed. R. Serv. 2d 620 (3d Cir. 1978).
- 11 U.S.—*Morse v. Lewis*, 54 F.2d 1027 (C.C.A. 4th Cir. 1932); *Hall v. Burkett*, 391 F. Supp. 237 (W.D. Okla. 1975).
- 12 U.S.—*U.S. v. Townsend*, 478 F.2d 1072 (3d Cir. 1973); *Smith v. Danyo*, 441 F. Supp. 171 (M.D. Pa. 1977), *judgment aff'd*, 585 F.2d 83, 26 Fed. R. Serv. 2d 620 (3d Cir. 1978).
- D.C.—*Matter of Bell*, 373 A.2d 232 (D.C. 1977).
- Substance of alleged disparaging remarks not specified**
- D.C.—*Matter of Evans*, 411 A.2d 984 (D.C. 1980).
- 13 U.S.—*Roussel v. Tideland Capital Corp.*, 438 F. Supp. 684, 25 Fed. R. Serv. 2d 375 (N.D. Ala. 1977).